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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 103

ELLIS ARNALL, Director of Price Stabilization, *Petitioner*

v.

SAFEWAY STORES, INCORPORATED

BRIEF FOR THE RESPONDENT IN OPPOSITION

ELISHA HANSON,
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Attorneys for Safeway Stores, Incorporated.

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INDEX.

	Page
Opinion Below	1
Jurisdiction	1
Question Presented	2
Statutory Provisions Involved	2
Statement	2
Argument	4
Conclusion	6

CITATIONS.

CASES:

Aldridge v. *Williams*, 3 Howard 9	5
Binns v. *United States*, 194 U.S. 486	5
Collett, ex parte, 337 U.S. 55	5
Duplex Printing Press v. *Deering*, 254 U.S. 443	5
Gemsco, Inc. v. *Walling*, 324 U.S. 244	5
Packard Motor Car Co. v. *N.L.R.B.*, 330 U.S. 485	5
Railroad Commission v. *C. B. & Q. R. Co.*, 257 U.S. 563	5
Schwegmann v. *Calvert Distillers*, 341 U.S. 384	5
United States v. *Shreveport Grain & Elevator Co.*, 287 U.S. 77	5

STATUTES:

Defense Production Act of 1950, 64 Stat. 798, 808, 50 U.S.C. App., Supp. IV, 2061, 2108(a)	2, 4
Section 402(d)(4)	2, 3, 4, 6
Section 402(k)	2, 3, 4
Section 408(a)	4

MISCELLANEOUS:

Sutherland, *Statutory Construction*, §4702	5

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OPINION BELOW.

The opinion of the United States Emergency Court of Appeals (R. 123-127) has not yet been reported.

JURISDICTION.

The judgment of the United States Emergency Court of Appeals was entered May 5, 1952 (R. 128). The petition for a writ of certiorari was filed June 3, 1952. Jurisdiction of this Court is invoked under Section 408(d) of the Defense Production Act of 1950 (64 Stat. 808, 50 U. S. C. App. Supp. IV 2108(d).)

QUESTION PRESENTED.

Whether the Court below properly held that wholesalers and retailers of materials were not excluded from the operation of Section 402(d)(4) of the Defense Production Act of 1950, as amended in 1951.

STATUTORY PROVISIONS INVOLVED.

The pertinent provisions of the Defense Production Act of 1950 (Act of September 8, 1950, 64 Stat. 798, 50 U. S. C. App., Supp. IV, 2061) as amended by the Defense Production Act Amendments of 1951 (Act of July 31, 1951, 65 Stat. 131), are set out in the Petitioner's Appendix, pp. 25-27.

STATEMENT.

Respondent Safeway Stores, Incorporated, operates approximately 2,000 retail food stores in twenty-three states and in the District of Columbia as a single corporate entity. Since May 14, 1951, respondent's sales of commodities at retail have been subject to Ceiling Price Regulation 15 (CPR 15), which fixes ceiling prices for certain "dry groceries" and "perishables" sold in retail stores doing an annual business of more than $375,000 and in all "chain" stores regardless of the amount of their annual business[1] (R. 47-111; 16 Fed. Reg. 2735).

After the Amendments of July 31, 1951, had added Sections 402(d)(4) and 402(k) to the Act, respondent filed with the Office of Price Stabilization (OPS), between August 24, 1951, and October 1, 1951, a series of twenty-eight applica-

[1] This respondent disagrees with the statement, pp. 2 and 3 in the petition, that petitioner followed the normal pricing practices of the industry in fixing the markups in CPR 15. The statement of considerations accompanying the issuance of the regulation shows that he disregarded information supplied by the industry and based his markups on a guess, rather than on facts (R. 49, 50, 51). The survey promised (R. 49) has not been completed although 16 months have elapsed since the promise was made. No adjustments have been made in the light of the promised survey.

tions in which it requested adjustment of ceiling prices pursuant to Section 402(d)(4) of the Act, or in the alternative, an amendment of CPR 15 establishing ceiling prices thereunder which would enable retailers, including respondent, to realize on retail sales their customary percentage margins over costs of the materials during the period May 24, 1950 to June 24, 1950, inclusive[2] (R. 9-21).

Respondent also requested OPS to issue regulations for the processing of applications by retailers for adjustment as provided in Section 402(d)(4).

In a letter dated October 2, 1951, the Director of Price Stabilization wrote respondent's attorney, Elisha Hanson, concerning twenty-five of the applications for adjustment (R. 22). In this letter the Director stated that Section 402(d)(4) of the Act "does not in this case provide a basis for the adjustment for which you have applied since that Amendment does not apply to your client who is a seller at retail" and that, therefore, the Director "does not plan to issue regulations to provide for adjustments of retail prices on the basis" suggested in the applications for adjustment. In the same letter the Director advised respondent that its petition for amendment to CPR 15, proposed as an alternative to his granting the applications for adjustment, was "denied" (R. 22). The letter stated that Section 402(k) by its very terms operated only prospectively and did not apply to regulations issued prior to July 31, 1951.[3]

In a letter dated October 16, 1951, the Director disposed of the remaining applications for adjustments mentioned above in the identical manner (R. 25).

On October 29, 1951, respondent filed with OPS a protest (OPS Docket #1015-1-P) to CPR 15 in which it contended that CPR 15 is invalid by reason of the Director's refusal to afford respondent relief under Section 402(d)(4) (R.

[2] The alternative request was for relief under Section 402(k) of the Act.

[3] On June 30, 1952, Congress made Section 402(k) retroactive as shown in footnote 4, *infra*.

1-8). In its protest respondent further asserted that the Director's denial of its petition for amendment to CPR 15 constituted an "order" which, contrary to the provisions of Section 402(k) of the Act, denied to sellers of material at retail, including respondent, their customary percentage margins over cost of the material during the period May 24, 1950, to June 24, 1950 (R. 6, 7). Also, in its protest, respondent requested that OPS rescind CPR 15 and issue no further regulation establishing ceiling prices for the items covered by CPR 15 except one which complied with the requirements of Sections 402(d)(4) and 402(k) of the Act and with all other requirements of the Act. (R. 7).

On November 29, 1951, the Director issued his order denying respondent's protest in part and dismissing it in part (R. 28).

In his Opinion accompanying the order the Director reiterated his position stated earlier that Section 402(d)(4) of the Act was "not available to sellers at retail and that consequently there was no basis for granting the application for adjustment" (R. 30). The protest was denied.

On December 21, 1951, respondent filed its complaint with the United States Emergency Court of Appeals pursuant to Section 408(a) of the Defense Production Act of 1950, 50 U. S. C. App. Supp. IV, 2108(a) (R. 113-118).

The United States Emergency Court of Appeals on May 5, 1952, set aside the orders complained of and remanded the cause with instructions to consider the applications for adjustment on their merits. (R. 128).

ARGUMENT.

I.

No sound reason has been presented by petitioner for the granting of the writ prayed for.

As found by the Court below the language of the statute is perfectly clear and unambiguous. The Court below was correct in finding that the primary evidence of legislative intent is in the language of the statute and where the lan-

guage is clear and unambiguous and its effect is not unreasonable, futile or absurd there is no need to search legislative history for construction of such statute. In fact, as the Court found, there was no need for construction and no ambiguity to be resolved by a resort to legislative history.

As this Court has so often held, where there is no obscurity or ambiguity there is no room for construction. The plain words and meaning of the statute cannot be overcome by legislative history, which, through strained processes of deduction from events of wholly ambiguous significance may furnish dubious bases for inferences in every direction. Ex parte *Collett*, 337 U. S. 55, 61 (1949); *Packard Motor Car Co.* v. *N. L. R. B.*, 330 U. S. 485, 492 (1947); *Gemsco, Inc.* v. *Walling*, 324 U. S. 244, 260 (1945). Cf. also Mr. Justice Jackson's concurring opinion in *Schwegmann* v. *Calvert Distillers Corp.*, 341 U. S. 384, 395 (1951).

Even reports of the committee reporting a bill are properly given consideration only when the meaning is doubtful —they cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms. "Such aids are only admissible to solve doubt, and not to create it." *Railroad Commission* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, 589 (1922); *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77, 83 (1932); Sutherland, *Statutory Construction* § 4702 (3rd ed. 1943).

Furthermore, even if it were proper for this court to consider the legislative history of Section 402(d)(4), still it would not be proper to consider that which is relied upon by petitioner. For debates in Congress expressive of the views and motives of individual members have historically been held inappropriate guides to the ascertainment of the meaning and purpose of the lawmaking body, and particularly so when the statutory language is clear. *Aldridge* v. *Williams*, 3 Howard 9 (1845); *Duplex Printing Press* v. *Deering*, 254 U. S. 443, 474 (1921); *Binns* v. *United States*, 194 U. S. 486, 495 (1904).

II.

The Court below was correct in its statement that

> "if the language which the Congress used in Section 402(d)(4) was too broad to express its real intention and there was legislative purpose, not reduced to writing or incorporated in the Capehart Amendment, to exclude wholesalers and retailers from its operation the way is open to correct the error by amendatory legislation. Indeed such legislation was proposed within a few weeks after the enactment of the Capehart Amendment and was passed by the Senate on October 4, 1951 but failed of passage in the House of Representatives. The failure of Congress to enact this amendatory legislation is evidence of its satisfaction with the language of the amendment as originally enacted and as we have here interpreted it and supports our conclusion in this case."[4]

CONCLUSION.

Because of the fact that the issue here presented is a clear cut one of statutory construction in which the Court below properly followed the decisions of this Court and also because of the fact that petitioner has presented no sound

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[4] This Court's attention is directed to the fact that on June 30, 1952, Congress did amend various sections of the Defense Production Act, including the one here in controversy, as well as Section 402(k). It added the following words to Section 402(d)(4):

> "The provisions of this paragraph shall not apply in the case of a seller of material at retail or wholesale within the meaning of Sub-Section (k) of this Section."

It amended Sub-Section (k) by making that section retroactive through providing that no regulation should be issued *or remain in effect* which shall deny sellers of materials at retail their customary percentage margins over costs of the materials *or their customary charges* during the pre-Korean period. It is thus obvious that in 1952 Congress itself took certain steps to clear up the inequities complained of by respondent in the Court below.

reason for the issuance of the writ for which it prays, respondent respectfully submits that the petition should be denied.

Respectfully submitted,

ELISHA HANSON,
ARTHUR B. HANSON,
Attorneys for Safeway Stores, Incorporated.

GARLAND CLARKE,
Of Counsel.

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 103

TIGHE E. WOODS, Director of Price Stabilization,[1]
Petitioner

v.

SAFEWAY STORES, INCORPORATED

On Petition for a Writ of Certiorari to the Emergency Court of Appeals

SUGGESTION THAT JUDGMENT BE VACATED AND CASE REMANDED TO COURT BELOW FOR FURTHER PROCEEDINGS

The Acting Solicitor General, on behalf of Tighe E. Woods, Director of Price Stabilization, respectfully suggests to the Court that the judgment of the court below should be vacated and the case remanded to that court for further proceedings.

In its complaint, filed with the court below on December 21, 1951, respondent, Safeway Stores, Incorporated, sought review of the orders of the Director of Price Stabilization denying its applications for adjustments under Section 402(d)(4) (Capehart Amendment) and Section 402(k) (Her-

[1] There is being filed simultaneously herewith a motion to substitute Tighe E. Woods for Ellis Arnall as Director of Price Stabilization.

long Amendment) of the Defense Production Act of 1950, as amended,[2] in Ceiling Price Regulation 15, applicable to its retail sales of most dry and certain perishable grocery products. In its opinion issued on May 5, 1952, the court below held respondent entitled to relief under the Capehart Amendment, which it read as applying to retailers, such as respondent; and, without passing upon respondent's alternative claim for relief under the Herlong Amendment, the court directed that the Director's orders be set aside. The petition for a writ of certiorari which was filed on June 3, 1952, questioned the soundness of this construction of the Capehart Amendment.

Section 107 of the Defense Production Act Amendments of 1952 (approved June 30, 1952) (66 Stat. 296, 298) amended the Capehart provision by adding at the end thereof "The provisions of this paragraph shall not apply in the case of a seller of a material at retail or wholesale within the meaning of subsection (k) of this section." Since the enactment of this amendment makes it clear that retailers, such as respondent, are not to be, if they ever were, entitled to the benefits of the Capehart Amendment, there no longer is any question to be resolved by this Court as far

[2] The Capehart and Herlong Amendments were added to the Defense Production Act of 1950 (Act of September 8, 1950, 64 Stat. 798, 50 U.S.C. App. Supp. V, 2061) by the Defense Production Act Amendments of 1951 (Act of July 31, 1951, 65 Stat. 131).

as the limited holding of the court below is concerned; by the express terms of the 1952 amendment the Director of Price Stabilization is not to grant an adjustment under the Capehart Amendment to retailers such as respondent. In these circumstances, the usual procedure has been for the Court to grant certiorari, reverse the judgment below, and remand with directions to dismiss the cause as moot. See, *e.g., Securities & Exchange Commission* v. *Harrison,* 340 U. S. 908; *Brotherhood of Locomotive Firemen and Enginemen* v. *United States,* 343 U. S. 971. However, inasmuch as respondent has alternatively claimed entitlement to relief under the Herlong Amendment and the court below has not passed upon that claim, the Court may deem it more in accord with sound judicial administration, after granting certiorari and reversing judgment below, to remand the case to the court below with directions to determine whether respondent is entitled to relief under the Herlong Amendment. See, *e.g., Woods* v. *Durr,* 336 U. S. 941; *Molsen* v. *Young,* 340 U. S. 880; *Mitchell* v. *White Consolidated, Inc.,* 336 U. S. 958; *Edward G. Budd Mfg. Co.* v. *National Labor Relations Board,* 332 U. S. 840; *Alaska Juneau Gold Mining Co.* v. *Robertson,* 331 U. S. 823, 793.

Respectfully submitted,

ROBERT L. STERN
Acting Solicitor General

SEPTEMBER, 1952.

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TIGHE E. WOODS, Director of Price Stabilization, *Petitioner*,

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SAFEWAY STORES, INCORPORATED

REPLY TO SUGGESTION THAT JUDGMENT BE VACATED AND CASE REMANDED TO COURT BELOW FOR FURTHER PROCEEDINGS

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SAFEWAY STORES, INCORPORATED

REPLY TO SUGGESTION THAT JUDGMENT BE VACATED AND CASE REMANDED TO COURT BELOW FOR FURTHER PROCEEDINGS

Petitioner has suggested to this Court that the judgment of the court below be vacated and that this case be remanded to that court for further proceedings.

This Court should take into consideration the fact that there remains no point of law to be decided by the Emergency Court of Appeals. As pointed out by petitioner, there has been an amendment to the Capehart Amendment. There has also been a significant amendment to the Herlong Amendment,[1] which petitioner did not point out. As a re-

[1] Section 402(k), Defense Production Act of 1950, as amended by the 1951 Amendments, provided in part as follows: "No rule, regulation, order or amendment thereto shall hereafter be issued under this title, which shall deny to sellers of materials at retail or

sult of this amendment, the question raised concerning petitioner's determination that certain letters written by petitioner[2] on October 2 and 16, 1951, were not "orders," within the meaning of the Herlong Amendment, is now moot, inasmuch as relief is now provided against regulations pre-dating the original Herlong Amendment, as well as those issued after its enactment. Consequently there is no point of law remaining to be decided by the court below.

Thus the cases cited by petitioner to support the proposition that this Court should remand to the court below for determination whether respondent is entitled to relief under the Herlong Amendment are not in point, as they involve remanding to a lower court for the determination of the effect of a provision of law or regulation on the circumstances of a case. In the instant case, there is no such situation, as there might have been had the Herlong Amendment not been amended in 1952.

It is to be noted, further, that petitioner, in dismissing that part of the protest relating to the Herlong Amendment, did not adjudicate on their merits respondent's complaints that it was being denied its Herlong Amendment margins. This case was considered by petitioner, both at the administrative level, and in the proceedings below, as in-

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wholesale their customary percentage margins over costs of the materials during the period May 24, 1950, to June 24, 1950 • • •" Section 402(k), Defense Production Act of 1950, as amended by the 1952 Amendments, provides in part as follows: "No rule, regulation, order, or amendment thereto shall be issued or remain in effect under this title, which shall deny sellers of materials at retail or wholesale their customary percentage margins over costs of the materials or their customary charges during the period May 24, 1950, to June 24, 1950 • • •"

[2] The word "petitioner" is used herein to refer to the holder of the office of Director of Price Stabilization. These letters were written by Michael V. DiSalle, Director at that time, who was succeeded by Ellis Arnall on February 18, 1952, who in turn was succeeded by Tighe E. Woods on September 2, 1952.

volving purely a matter of law.[3] Consequently the Emergency Court is not in a position to decide whether or not a determination of fact by petitioner was based on substantial evidence.[4]

It is respectfully submitted, therefore, that there should be no remand to the court below without instructions that that court, in view of the 1952 Amendment to the Herlong Amendment, direct petitioner to consider respondent's petitions for amendment to Ceiling Price Regulation 15 on their merits.

ELISHA HANSON,
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Attorneys for Safeway Stores, Incorporated.

GARLAND CLARKE,
Of Counsel.

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[3] In his objections to respondent's applications below for introduction of additional evidence, petitioner stated that

> "The only issues thus presented to the court are questions of law as to the propriety of respondent's interpretations of Section 402(d)(4) and Section 402(k)."

The court below apparently adopted this view as it denied respondent's applications, at the same time granting applications to introduce largely identical evidence in a companion case wherein a factual issue was presented to the Court (*Safeway Stores* v. *Arnall*, Em. App. No. 590, which is still pending in the court below.)

[4] Section 408(a), Defense Production Act of 1950, as amended by the 1952 Amendments, provides in part as follows:

> "The findings of the President with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive."